

REMARKS

Reconsideration of this Application and entry of this Amendment after Final are respectfully requested. The proposed amendment places the claims in better form for appeal. Additionally, this amendment addresses items raised by the examiner in the final office action. In view of the amendments and following remarks, favorable consideration and allowance of the application is respectfully requested.

Claims 1, 5-7, 9, 11, and 27 remain in the application. Claim 2 was cancelled in a previous amendment. Claim 5 has been amended to correct a typographical error. No new matter has been added by way of this amendment.

35 U.S.C. §103 Rejections

The Examiner has considered the Declaration of Robert L. Cafferata to be insufficient to overcome the §103 rejection since it does not include all the inventors. Accordingly, the rejection of Claims 1, 2, 5-7, 9, 11, and 27 under 35 USC §103(a) as obvious over US 5,443,458 ("Eury") in view of WO01/07066 ("WO '066") was maintained. As stated above, Claim 2 was cancelled.

Appended to this response are the 37 C.F.R. §1.131 Declarations of all the inventors, Robert L. Cafferata, Peiwen Cheng and Wenda Carlyle which state that Inventor Cafferata reduced the invention to practice before 01 February 2001. Assuming, *arguendo*, that WO '066 is prior art, it only may be prior art under 35 U.S.C. §102(a) as of its publication date, February 1, 2001. The concurrently-filed Declarations and the evidence submitted therewith establish that the claimed invention was reduced to practice before February 1, 2001.

The Applicants have established that WO '066 is not prior art to the present application and Eury alone is insufficient to maintain the obviousness rejection. Accordingly, the Applicants respectfully request withdrawal of this rejection.

Conclusion

For the foregoing reasons, Applicant believes all the pending claims are in condition for allowance and should be passed to issue. The Commissioner is hereby authorized to charge any additional fees which may be required under 37 C.F.R. §1.17, or credit any overpayment, to Deposit Account No. 01-2525. If the Examiner feels that a telephone conference would in any way expedite the prosecution of the application, please do not hesitate to call the undersigned at telephone (707) 543-5021.

Respectfully submitted,

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